IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE FOURTH DAY OF NOVEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE G. BIKSHAPATHY

And
THE HON'BLE MR JUSTICE Ch.S.R.K. PRASAD

WRIT PETITION No: 18650 of 2004

Between:

B.Prasad Reddy, S/o.Katamaiah,
R/o.Prsannayapalli (V), Rapthadu Mandal, Anantapur Dist.

..... PETITIONER

AND

1 The Collector & District Magistrate, Anantapur.
2 The Government of A.P., rep. by its Chief Secretary, Hyderabad.
3 The Superintendent of Central Prison, Cherlapally, R.R.Dist.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ of Habeas Corpus directing the Respondents to produce the detenu Sri B.Mahananda Reddy, S/o.Katamaiah, now detained in Central prison, Cherlapally, before this Hon'ble court and he may be ordered to be released forthwith after declaring his detention as illegal and void.

Counsel for the Petitioner: MR.C.PRAVEEN KUMAR

Counsel for the Respondents: THE ADVOCATE GENERAL

The Court made the following:

ORAL ORDER: (By GB.J.)

This Writ Petition is filed seeking Writ of Habeas Corpus directing the respondents to produce the detenu B. Mahananda Reddy, S/o. Katamaiah, detained in Central Prison, Cherlapally and he may be ordered to be released forthwith after declaring his detention as illegal and void.

2. The detenu was detained by the order passed by the Collector and District Magistrate, Anantapur District, by virtue of the powers vested under Section 3 of the Andhra Pradesh Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug Offenders, Goonddas, Immoral Traffic Offenders and Land Grabbers Act, (Act 1 of 1986). The following are the grounds annexed to the order of detention.

> "1. Cr.No.338/02 u/s 448, 506, 365 r/w 34 IPC of Anantapur I town PS:- You have been involved in the following acts so far. On 12-12-2002 at 9 a.m. you and your 4 followers went to the house of Mitaigari Meera Mohiddin, age 50 yrs, S/o. Fakruddin, R/o. Dr.No.28/135-1-2, Navodaya colony, Anantapur in Mahindra Jeep bearing No.AP-02-G-4425 and criminally trespassed into his house and beat his son Nisaruddin, age 23 yrs, with hands and legs and forcibly took him in the said Mahendra Jeep threatening the complainant Meera Mohiddin, his wife and children with dire consequences when they intervened. You have committed this offence only to collect the loan from Nisaruddin S/o of the complainant.
>
> 2. Cr.No.46/03 u/s 147, 148, 302 r/w 149 IPC and Sec.3,4,5 & 6 of ES Act of Rapthadu PS:- On 22-06-03 at about 10 a.m. you and others under leadership of Vennapusa Venkataramireddy formed into members of an unlawful assembly at the out skirts of Prasannayapalli (v) armed with hunting sickles, daggers, country made bombs with common object attacking V. Chalapathi and Panjagala Ramachandra and Venkatanarayana and attacked them with

lethal weapons and murdered brutally due to village supremacy.

3. Cr.No.11/04 u/s 143, 353 r/w 149 IPC of Rapthadu PS:- On 02-02-2004 at about 6 p.m. you along with Vennapusa Venkatasivareddy and 8 others formed into an unlawful assembly at Prasannayapalli (v) with a common object and attacked one V. Sulochana, W/o. Uppara Chinna Kotla Sreenivasulu @ Seena @ Auto Seena of Prasannayapalli (v) and outraged her modesty by dragging her saree and blouse and beat her due to previous grudges with regard to factious ill feelings and clearance of the loan amount borrowed by the A1 from the complainant V.Sulochana.

4. Cr.No.90/03 u/s 107 Cr.P.C. of Rapthadu PS: - On 5-11-2003 security proceedings u/s 107 Cr.P.C. are initiated against you and 18 others. You are facing trial in the Court of Sub-Divisional Magistrate, Anantapur in MC.No.14/03.

In view of your criminal record, a Rowdy sheet No.76/AN was also opened and being continued in Rapthadu OS since 13-2-2003 to have proper surveillance over your activities.

5. Cr.No.71/04 u/s 143, 144 r/w 149 IPC & Sec.25(1B)(b) of Arms Act of Rapthadu PS:- Despite the initiation of security proceedings u/s 107 Cr.P.C. against you in MC.No.14/03 on the file of Sub-Divisional Magistrate, Anantapur and even after opening of rowdy sheet against you at Rapthadu PS you are again arrested on 29-8-2004 along with 4 others at prasannayapalli village and 15 sickles, 1 sword, 2 iron pipes (lethal weapons) are seized from your possession while you and 4 others were preparing to commit a cognizable offence."

The said grounds are sought to be assailed in this Writ Petition.

3. The learned Senior Counsel Mr.C.Padmanabha Reddy appearing for the detenu submits that the grounds mentioned in the order of detention are stale in nature and relate to individual offences. Secondly, he submits that initiating proceedings under Section 107 Cr.P.C. and opening Rowdy Sheet would not fall within the definition of "Goonda" as contained in 2(g) of the Act. Lastly, he submits that Crime No.71 of 2004 under Sections 143, 144 read with 149 IPC and Section 25(1B)(b) of Arms Act of Rapthadu Police Station also do not fall within the parameters of the definition of

Goonda and therefore, order of detention is liable to be set aside and the detenu is entitled to be released forthwith.

4. On the other hand the learned Advocate General submits that it is only to assess propensity of the accused the earlier instances have been taken into consideration and that they would not in any way vitiate the detention order and therefore, the order is quite legal and valid.

5. We have heard both the learned counsel.

6. Crime No.338 of 2002 under Sections 448, 506 and 365 read with 34 IPC was registered on 12-12-2002 which was the offence alleged to have committed against an individual viz., Mitaigari Meera Mohiddin, S/o. Fakruddin. Admittedly, that offence was alleged to have been committed in 2002 and the order of detention is passed in September, 2004, after lapse of nearly two years. It has been held by this Court in catena of decisions that proximity of time is one of the essential ingredients for issuing the detention order. Secondly, we also find that the grounds mentioned in Crime No.90 of 2003 which was filed under Section 107 Cr.P.C. of Rapthadu Police Station are irrelevant grounds and opening of Rowdy Sheet No.76/AN in Rapthadu Police Station. Added to this, the offence registered in Crime No.71 of 2004 under Sections 143, 144 read with 149 IPC and Section 25(1B)(b) of Arms Act of Rapthadu P.S. are irrelevant grounds and not covered by the definition “Goonda”.

7. The term ‘Goonda’ is defined under Section 2(g) of the Act, which reads thus:

> “Goonda means a person, who either by himself or as a member or a leader of a gang, habitually commits, or attempts to commit or abets the commission of offences punishable under Chapter XVI, or Chapter XVII or chapter XXII of the Indian Penal Code.”.

Therefore, the provision is very clear that the offences should fall under Chapters XVI, XVII and XXII of IPC and in the instance case, the offences are falling under Chapter VIII and therefore, the grounds basing on which the detention order falls beyond the parameters of the definition of “Goonda”.

8. Under those circumstances, we are of the considered view that the detention order is not sustainable in law and accordingly it is liable to be set aside.

9. In the result, the Writ Petition is allowed and the impugned order of detention passed by the 1st respondent is hereby quashed. The detenu shall be set at liberty forthwith, if not required in any other crime.

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04-11-2004

ES

That Rule Nisi is made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this **Thursday, the fourth day of November Two thousand and Four.**

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ASSISTANT REGISTRAR

To

1 The Collector & District Magistrate, Anantapur.
2 The Chief Secretary, Government of A.P., Hyderabad.
3 The Superintendent of Central Prison, Cherlapally, R.R. District.

4. 2CCs to the Advocate General, High Court Buildings, Hyderabad (OUT).

5. 2 CD copies.

ADVANCE ORDER

In the result, the Writ Petition is allowed and the order of detention bearing No.5001-4/MC/2004 dated 17-9-2004 passed by the first respondent- The Collector and District Magistrate, Anantapur District, is hereby quashed.

The detenu viz., Bhumi Reddy Mahananda Reddy, S/o. Katamaiah, shall be set at liberty forthwith, if he is not required in any other case.

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04-11-2004

ES

Note:- Return the bundle after
dispatch of the Advance Order
to the CM's Section.